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Memorandum



Subject	Date
Dymally Proposal to Transfer Prosecutive Authority from the United States Attorney for the District of Columbia to a Local Prosecutor	October 19, 1983

To WILLIAM P. TYSON, Director
Executive Office for
U.S. Attorneys

From STANLEY S. HARRIS **SSH**
United States Attorney
District of Columbia

On September 1, 1983, the Honorable Mervyn M. Dymally, Chairman, Subcommittee on Judiciary and Education, Committee on the District of Columbia, U.S. House of Representatives, transmitted a "discussion draft" of the District of Columbia Judicial and Criminal Justice Reform Act. The proposed bill contemplates changes in the administration of the criminal justice system in the District of Columbia which would:

- 1) transfer prosecutive authority for all D.C. Code crimes currently prosecuted in the Superior Court from the United States Attorney for the District of Columbia to a new entity, the Attorney General for the District of Columbia;
- 2) establish the Office of the D.C. Marshal and transfer of all functions that the U.S. Marshal currently performs in Superior Court to the D.C. Marshal;
- 3) enable the citizens of the District of Columbia to vote by referendum whether to give authority to the Mayor to appoint D.C. Judges (in lieu of the President) or select judges by popular election;
- 4) enable the citizens of D.C. to vote by referendum whether to give the Mayor authority to appoint the D.C. Attorney General or select the Attorney General by popular election.

The discussion draft was forwarded to the Office of Legislative Affairs (OLA), Department of Justice, which in turn asked me as United States Attorney for the District of Columbia to comment upon the proposal.

I strongly oppose all aspects of the Dymally proposal. In particular, as it relates to the transfer of the prosecutive authority in Superior Court from this office to the Attorney General for the District of Columbia, I join my predecessors, Earl J. Silbert, Esq., and Carl S. Rauh, Esq., in urging that the Department of Justice and the Administration oppose such a plan.
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The present system, whereby the U.S. Attorney is vested with prosecutive authority in the U.S. District Court and the D.C. Superior Court and is the chief law enforcement officer in the nation's capital, has served the

citizens of the District of Columbia and the interests of the federal government well. The U.S. Attorney's Office is nationally and locally respected as a unique and innovative office adequately funded and staffed by a corps of professional prosecutors who daily earn the respect and esteem of the citizens of the District of Columbia whom they so ably serve. This fact was recognized by former Attorney General Griffin B. Bell, who urged former President Carter in 1978 to reject a proposal by the Office of Management and Budget to transfer prosecutive jurisdiction from the United States Attorney to the D.C. Government (see Appendix 1, Bell Opposition attachment 17). 2/

Former U.S. Attorney Silbert vigorously opposed the Dymally predecessors, H.R. 9788 and H.R. 1253, mainly on the basis that law enforcement would deteriorate due to the inevitable conflict caused by splitting prosecutive authority in a city with unique federal concerns. (See Appendix 2, Silbert Opposition.) Mr. Silbert was joined in opposition to the bills by the Board of Judges of the Superior Court, who opposed them on the grounds "that it would seriously degrade and disrupt the criminal justice system in Superior Court." 3/ The Board of Judges reached the following conclusion as stated in their resolution of June 20, 1979 (see Appendix 4):

In conclusion, it is the position of the Board of Judges that there should be no changes made in the organic structure and basic method of operation of the Superior Court of the District of Columbia such as those proposed by the Mayor in his 1979 Legislative Program unless and until it is first demonstrated to us by detailed legal and fiscal plans that the proposed changes will improve and not adversely affect the present administration of justice in the District of Columbia.

The judges' collective fears that the new political prosecutor's office would be mismanaged, underfunded, understaffed, and unable to attract the quality lawyers typically drawn to the Office of the U.S. Attorney was founded upon the courts' daily contact with the D.C. Corporation Counsel's Office, which historically has been underfunded and understaffed, thereby reducing its overall competency and, specifically, causing its failure to effectively prosecute juvenile cases in the Superior Court.

Past and present experience by this Office with the Office of the Corporation Counsel, which processes juvenile, traffic, and minor misdemeanor matters, offers little hope that the transfer would do anything but further reduce the quality and quantity of prosecutorial services provided. Over the past decade, the resources made available to the Corporation Counsel by the Mayor and the Council to handle juvenile offenses have been woefully inadequate. A 1978 memorandum by the Executive Office for U.S. Attorneys offers the following example:

While nearly one-half of burglary arrests and over one-third of robbery arrests in the District in 1976 involved juvenile offenders, the Corporation Counsel was afforded roughly one-eighth of the resources allocated to this office for comparable adult prosecutions.

The District of Columbia's own Criminal Justice Coordinating Board observed in its 1978 Comprehensive Criminal Justice Plan (pages III-76-77):

. . . [M]anpower shortages in the juvenile section have resulted in an annual no paper rate in excess of 30% of all cases. Over 50% of all youth who come in contact with the juvenile justice system are not even referred to the prosecution; only the most serious cases are referred by the police. Therefore, it is safe to assume that of the 35% of the cases dismissed by the prosecutor at least a substantial number involved youth with serious delinquency problems who have probably had repeated prior contact with the police--often for major crimes. At the present time, there is no coordinated mechanism for systematically determining which cases should be fully prosecuted, which cases are appropriate for diversion programs, and which should be dismissed from the juvenile justice system altogether. In addition, there is no sufficient knowledge of available community resources that could be used for diverted delinquent youth nor are there sufficient resources to follow up on treatment plans for diverted youth or services provided to them. The result of this lack of comprehensive screening and service delivery is that many youth coming in contact with the juvenile justice system, often for the third, fourth, fifth time or more, are simply dismissed with no service and no sanction. While data is not currently available, it is assumed that many of these youth continue to commit delinquent offenses and eventually return to court for serious offenses which are prosecuted.

With this demonstrated inability to provide adequate resources for the most important juvenile prosecutions, and with the reduced funding of the Corporation Counsel's Office during a period when its caseload and responsibility were increasing, it is highly unlikely that a local prosecutor, even with some additional resources, would be able to match the performance of the United States Attorney's Office in efficiency, effectiveness, and responsiveness to its constituents.

Underfunding of the Corporation Counsel is not the only problem. The Superior Court budget has been underfunded in excess of 2 million dollars in 1981-1983, which has contributed to court delay as reported in the media. Retired Superior Court judges who assist that court by working after their retirement have no staff support. File rooms are understaffed and the court has no bailiffs. Thus, those of us who predict a significant decrease in the quality of law enforcement and prosecution if the Dymally transfer proposal is adopted can point to the public record for support for our conviction that the D.C. Government cannot and will not devote sufficient resources to fund adequately the transfer of the prosecutive function.

Mr. Silbert's and the Superior Court judges' forecast that the quality of law enforcement would decline as a result of the prosecution transfer is based in part upon the D.C. Government's failure to adequately fund law enforcement-related functions in the post-home rule era. On October 3, 1983, I testified before the D.C. City Council and opposed the City's proposal to solve the jail overcrowding problem by releasing felons early. The City needs to build more jails but refuses to allocate funds for jail expansion (see Appendix 5). In fiscal 1983, Senator D'Amato's committee had to appropriate in excess of 4 million dollars to hire a sufficient number of Metropolitan Police Department officers to ensure basic law enforcement in the City. Thus, it is clear that the D.C. Government has always underfunded law enforcement programs in this community.

Although the Congress during the 1970's has granted the District of Columbia greater independence and self-determination, neither the Court Reorganization Act of 1970 nor the D.C. Self-Government Act of 1973 gave serious misdemeanor or felony prosecutive authority in Superior Court to the local authorities. The underlying reason for Congress' decision not to disturb the prosecutive role of the U.S. Attorney is the recognition that Congress and the federal government have a presence in the District of Columbia unlike any other city in the United States.

Any proposal, therefore, which would effect such fundamental change should have at its base not merely superficially appealing form but quickly achievable constructive results. This is especially so when, as here, a delicate system is presently and increasingly heavily burdened with severe problems of volume, efficiency, space and solvency. To fragment responsibility for this system--to create on this record two chief prosecutors for the ten-mile square seat of our national government, as the Dymally proposal would do--is to engage in an indefensible risk-taking which pays hollow tribute, indeed, to the lofty goals proffered by its proponents.

The Dymally proposal's stated purpose is to relieve the federal government of the burden of what it deems to be "essentially local" District responsibilities. (See Dymally proposal Title I, Sec. 102.) Under the Constitution, Congress has the exclusive power to legislate for the District of Columbia, Article I, § 8, cl. 17. While the Congress has chosen to delegate part of its authority in regard to the nation's capital, it cannot under the Constitution as it now stands, relinquish its responsibilities to protect the federal interest. Advocates for restricting the jurisdiction of the United States Attorney tend to define this interest in rather narrow terms. Beguiled by the symmetry of two separate criminal justice systems, they fail to perceive the inextricable and proper intertwinement of the national and local interests of this, the only federal city.

The District of Columbia simply is not a state, and state-federal analogies are not helpful to proponents of preempting the local jurisdiction of the United States Attorney. The federal government owns approximately 41% (12,348 acres) of all land within the District of Columbia. There are over 200 buildings either owned or leased by the federal government within the District of Columbia and well over 400 such buildings in the entire Washington metropolitan area. There are over 445,000 federal employees who live and work in the Washington metropolitan area. Thousands of others in private business daily commute in and out of this city. Millions of tourists visit here each year. Because crime affects them all, the criminal justice

system must be responsive to their interests. Victims, witnesses and defendants in criminal cases hail from all parts of the country --often from the very suburbs of this city. Crime itself, of course, pays little heed to our local boundaries and its commission routinely involves more than one jurisdiction.

Further, the size of the diplomatic community here provides a continuing need for a unitary federal prosecutorial system due to the sensitivity of matters affecting this corps. This is particularly so when diplomats are not merely victims of crime, but are the subjects of criminal probes which involve invocations of diplomatic immunity and other attendant negotiations with the Department of State and embassies. That federal law enforcement jurisdiction must be equal to its federal responsibilities is clear from the need to care for the more than 50,000 foreign nationals in the District of Columbia as accredited diplomats, members of the many international organizations, and support personnel and families, who are part of the fabric of city life in the nation's capital.

The Dymally proposal would stand the uniqueness of the District of Columbia on its head. While it would reduce the jurisdiction of the United States Attorney below that of any other chief federal prosecutor throughout the country, it also without justification would give, through its allowance of an expanded subpoena power, more power to the chief local prosecutor and local judges than any similarly situated local prosecutor or judge in the country. This anomaly itself amounts to an inadvertent concession that "local" crime within the District of Columbia not uncommonly has extra-jurisdictional dimensions.

Federal interest as a term of art, therefore, contemplates a breadth of circumstances far broader than the locus of the crime within the District of Columbia or the local addresses of the involved parties. Its dimensions are a function of the unique nature of the city as the seat of government and center of international diplomacy and commerce and the corresponding enactments of Congress which, in the words of former Attorney General Bell, have always "recognized the fact that the government cannot afford the risk of having a local prosecutor in the District of Columbia without responsibility or accountability to the President, and the Congress, and the national as opposed to the local interests." (See Appendix I, attachment 17, p. 1, Bell opposition.) The proposed change to local control is simply not in harmony with the breadth of the federal interests involved in law enforcement within the District of Columbia

Proponents proclaim, however, that citizens of the District of Columbia would gain a greater degree of self-determination--a concept cherished by all Americans--with the installment of a local prosecutor. It is true, of course, that a quantitative increase in self-determination would occur in the event of an elected District Attorney, a possibility under the Dymally proposal. ^{4/} However, whatever speciousness is achieved by such reasoning cannot withstand analysis of the practical costs for this conceptual benefit. There is no free lunch. In the event that the Dymally proposal became law, the societal costs that would be borne by the ordinary citizens of the District of Columbia and others who come here would make any such conceptual "gain" a mere Pyrrhic victory. They would be measured not only by the decrease in money and manpower as discussed, supra, but also in the consequent increase in human misery fostered by a crippled criminal justice system unable to

respond to its ever-increasing needs. 5/ Ironically, both federal and local interests would then be left insufficiently protected. Such costs being both unnecessary and unwise, their assessment on those who live or come to our city is unsupportable.

Moreover, even if the local District Attorney were elected and the problem of excessive concentration of power met, there is still too great a potential for impairment of the ability of the federal government through the President, the Attorney General, and the Department of Justice to provide for public safety in the nation's capital. "An independently elected District Attorney could refuse for any personal or political reason or whim to cooperate and indeed take action that would jeopardize the ability of the federal government to assure peace and good order in the District of Columbia." (See Appendix 2, Silbert opposition at 6.) The Constitution and the Congress have made clear that the national interest must, in the final analysis, be preeminent in this, the national seat of government. Thus, the ultimate authority of whether to prosecute and its complementary duty of coordinating all law enforcement efforts must continue to be reposed in one chief law enforcement officer.

In a purported attempt to satisfy the national (federal) interests in law enforcement in the national capital, the Dymally proposal offers the same process of "certification" as its two predecessor bills. Under the proposal, the United States Attorney could prosecute no violations of the District of Columbia code without permission of the Attorney General of the District of Columbia except:

(d)(1) Where the United States Attorney General finds that a particular matter or case involves a legitimate and compelling federal interest, which justifies the exercise of exclusive federal jurisdiction, and such exercise of federal jurisdiction is in the public interest, he may file with the Clerk of the Superior Court of the District of Columbia a certification to that effect. The Attorney General may request that such certification be filed under seal if he deems it necessary to protect the integrity of an ongoing or contemplated investigation or the privacy of an individual, provided that the certification may not be filed under seal to the extent that it relates to an indictment or information previously filed in either court. Timely notice of any certification shall be given in writing to the Attorney General of the District of Columbia.

Unless the United States Attorney General invoked the certification process, written consent of the D.C. Attorney General would be required to join D.C. Code offenses to federal code indictments in U.S. District Court. Similarly, consolidation for trial in the U.S. District Court of indictments or informations brought in the name of the Attorney General of the District of Columbia could occur without such certification only by permission of the Attorney General of the District of Columbia.

At its base, certification, as does the Dymally proposal itself, rests on a facile notion of the neat divisibility of federal and local interests which is both inconsistent with past experience and incompatible with the national interest. Former U.S. Attorney Rauh has detailed the fatal flaws in such a concept (see Appendix 6, Rauh opposition to transfer):

It seems to us unlikely that the drafters of this portion of the plan fully appreciated the serious problems that would be presented by implementation of the Certification Proposal. In essence, the procedure would withhold from the United States Attorney for the District of Columbia the authority to prosecute all violations of federal statutes committed in the District of Columbia--authority possessed by federal prosecutors in every other federal district in the Nation--where the federal violation could be deemed to involve criminal conduct "essentially local in character," unless there were a special certification by the Attorney General or the Deputy Attorney General indicating that federal prosecution of the case would satisfy vague federal priorities and would be "more efficient" than local prosecution.

This proposed certification procedure, reducing the authority of the federal prosecutor below that of all other United States Attorneys in a jurisdiction which is the seat of the national government, which is not a state and in which there are special federal interests that do not exist in the individual states, is, we think, absurd on its face. It would unwisely circumscribe the authority of the United States Attorney in the District of Columbia to prosecute violations of federal statutes by placing upon that federal official constraints over his jurisdiction that exist in no other federal district. See 28 U.S.C. §547 (United States Attorneys are empowered to "prosecute for all offenses against the United States"). It is unworkable because the concepts of "essentially local" criminal conduct, "national law enforcement or criminal justice priorities," and "efficiency" of local versus federal prosecution which must be determined in order to utilize the procedure are hopelessly vague. And the proposed certification procedure is unnecessary because the existing statutory procedure has proven to be a workable means in the past for discriminating between those offenses which merit prosecution in the federal courts and those which should

be prosecuted in the local courts. Moreover, the existing procedure is probably the only procedure which would avoid double jeopardy problems that would be presented in the event that a local district prosecutor were to enjoy dual jurisdiction to prosecute the local aspects of a criminal transaction at the same time a federal prosecutor could prosecute the federal offenses involved in such a transaction.

It is our view that the proposed certification procedure would unwisely place limits upon the jurisdiction of the United States Attorney for the District of Columbia to prosecute violations of federal statutes--limitations that are placed upon no other United States Attorney in the federal system. Moreover, such a certification procedure is unnecessary, since the existing law, permitting the United States Attorney to prosecute in federal court offenses which involve both federal and local statutory offenses, has proven workable and effective. Finally, any procedure other than the present one would be likely to invite double jeopardy bars to prosecutions of cases involving both federal and local offenses, presenting insurmountable barriers to the effective prosecution of many serious criminal offenses. 6/

With its present authority, the Office of the United States Attorney also is able to vindicate its federal interest when criminal conduct may technically violate only local statutes but involves a national (federal) interest. The 1977 Hanafi takeover of the District Building, B'nai Brith, and the Islamic Center by Hamaas Abdul Khaalis and his followers is but one example. Relatives of elected national figures or of members of Washington's diplomatic community who are victims of, witnesses to, or charged with "local" crimes provide others. Even more generally, the ability of the United States Attorney to coordinate law enforcement efforts of the more than 38 law enforcement agencies in the District of Columbia, virtually all of which are federal, would be obliterated by the Dymally proposal.

Former U.S. Attorney Silbert has made a succinct exposition of the practical unworkability of certification (see Appendix 2, Silbert opposition at p. 6):

The certification process has obvious drawbacks of delay, inefficiency, creating ill-will, resulting lack of cooperation from police officers who are strangers to federal prosecutors, [and] lack of expertise in the "federal" office for D.C. Code crimes if transfer occurs.

Certification, it is clear, cannot sufficiently protect the federal interest in the federal city.

In conclusion, we do not posit our view on this matter simply on our pride in having performed so long and, as others have said, so well on behalf of our broad constituency--both national and local--of this unique city, nor upon a conceit that nobody could do it better (although we believe that to be the case). To do so would be unnecessary, parochial, and patronizing. We understand the "home rule" convictions of those who believe in the Dymally proposal. Far outweighing that, however, is the overwhelming body of evidence, comprised of both constitutional imperatives as well as our intimate knowledge of the criminal justice system in the District of Columbia, that compels us to act with the same vigor in opposing the Dymally proposal as we do on behalf of our clients every day in both courts in this city. There is a harmony in both tasks because in undertaking each we seek to vindicate the combined interests of the federal city and its citizens. Thus, we firmly are convinced that the United States Attorney's Office should retain that "burden" from which the Dymally proposal seeks to deliver us, because it is, beyond a reasonable doubt, properly ours to carry. The proponents of the Dymally proposal do not, nor could they, advance reasons soundly based either on the best interests of the nation's capital generally or in the efficiency of our criminal justice process specifically in support of their goals.

1/ I do not agree with the Dymally plan to transfer authority to nominate local judges from the President either to the Mayor or in the alternative to have judges selected by voters in general elections. The Board of Judges of the Superior Court opposed an identical proposal in a resolution dated June 20, 1979, which is attached as Appendix 4. Ideally, I would like to return to the prior system under which the President had unfettered discretion in the selection of local judges. However, the current system, whereby the Judicial Nomination Commission screens judicial applicants and sends three names to the President who nominates an individual for each judicial vacancy, is clearly preferable to nomination of local judges by the Mayor or direct election. The Congress in enacting the 1973 D.C. Self-Government Act deliberately retained judicial appointment power in the President and specifically denied giving the newly-created City Council any authority to legislate in any manner affecting the courts. See Sec. 433, 434 and 602(a)(4) of the D.C. Self-Government Act. This power was withheld from the D.C. Government because of the vital federal interest in maintaining an independent and highly-qualified judiciary. I also disagree with the proposal to withdraw the U.S. Marshals from Superior Court because of the detrimental effect such a move would have on the federal interest as that concept is defined in the body of this memorandum.

2/ As Appendix 1 indicates, the genesis for transfer of prosecutive authority from the U.S. Attorney in Superior Court to D.C. authorities arose out of a budget dispute between the D.C. City Council and the Department of Justice during 1975-1977. On September 23, 1977, the Executive Office for U.S. Attorneys recommended retention of prosecutive authority by the U.S. Attorney in Superior Court (see Attachment 14, Appendix 7). Attorney General Bell supported this position and opposed OMB's transfer proposal (see Attachment 17, Appendix 1). In 1979 President Carter directed that the Department of Justice and the D.C. Government set up a task force to explore the issue of transfer which resulted in the introduction of bills H.R. 7988 on August 21, 1980, and H.R. 1253 on January 23, 1981. These bills are identical to the Dymally bill except for the question of who will select the D.C. Attorney General and local judges. This question would be answered by the voters in a referendum.

3/ For a comprehensive analysis of the structure and operation of the D.C. Courts, and the present role of the United States Attorney in the District of Columbia, see Appendix 3, The Federal Role in the District of Columbia Justice System.

4/ If the Mayor is given authority to appoint the local prosecutor, all the potential conflicts and increased likelihood of chicanery enumerated by Mr. Silbert in his opposition to such a manifestly unsatisfactory proposal would obtain. (See Appendix 2, Silbert opposition.)

5/ Superior Court Board of Judges Resolution, Appendix 4.

6/ Rauh opposition at 2-3, Appendix 6.

DISTRICT OF COLUMBIA REIMBURSEMENT
FOR U.S. ATTORNEY AND MARSHAL SERVICES

Since 1939 the District of Columbia government has reimbursed the Miscellaneous Receipts account of the General Fund of the U.S. Treasury for the services provided by the Office of the U.S. Attorney and the Office of the U.S. Marshal to the District of Columbia Superior Court. This reimbursement arrangement was cited in the Department of Justice Appropriations Acts through fiscal year 1975, even though the funds reimbursed by the District were never actually returned to the Department.

The language in the General Provisions of the Department's Appropriations Act for fiscal year 1975 stated, for example:

Section 203. Fifty-three per centum of the expenditures for the offices of the United States Attorney and the United States Marshal for the District of Columbia from all appropriations in this title shall be reimbursed to the United States from any funds in the Treasury of the United States to the credit of the the District of Columbia: Provided, That notwithstanding the provisions of this section, not to exceed \$1,159,800 from any funds in the Treasury of the United States to the credit of the District of Columbia should be available for reimbursement to the United States pursuant to this section.

The actual amount reimbursed to the U.S. Treasury by the D.C. government has not always conformed strictly to the percentages stipulated, and the percentages themselves have varied over time. An April 17, 1974, letter from Comer S. Coppie, then Special Assistant to the D.C. Mayor-Commissioner, to Glen E. Pommerening, Assistant Attorney General for Administration, noted that the D.C. City Council refused to approve the FY 1975 reimbursement amount as billed by the Department of Justice; instead, the Council voted to "freeze the appropriation [reimbursement] at the FY 1974 level", \$892,500 less than billed by the Department (Attachment 1). Even though this City Council action only meant that one account of the Federal Treasury did not fully reimburse another account of the Federal Treasury, it should be noted that the Department has not forgotten this and similar incidents; it has remained concerned over the difficulty of gaining D.C. government approval of the requisite amounts of U.S. Attorney and Marshal operating funds to be reimbursed and, by extension, any actual payment of funds by the City.

On December 13, 1974, Gilbert M. Leigh, Deputy Director, Management Programs and Budget Staff of the Justice Department's Office of Management and Finance, met with Donald Smith, OMB Examiner for the Department's budget, Bill Leonard, OMB Examiner for the D.C. budget and Comer Coppie,

Budget Director for D.C. The meeting was called by the OMB examiners, reportedly at Mr. Coppie's request. Under provisions of the D.C. "Home Rule Act" (P.L. 93-198, District of Columbia Self-Government and Governmental Reorganization Act, Sec. 731 (Attachment 2)), the District requested that Section 203 be eliminated from the Department's Appropriation Act, thereby eliminating the requirement for D.C. to reimburse the U.S. Treasury for U.S. Attorney and Marshal services.

In a December 19, 1974, letter from Assistant Attorney General for Administration Pommerening to David M. Bray, OMB Deputy Associate Director for Economics and General Government, the Department formally stated its position on the City's request: it neither endorsed nor opposed the elimination of the reimbursement requirement. Since the Department received neither credit for nor use of the funds, the elimination of the City's reimbursement requirement would have no effect upon the Department's budget (Attachment 3).

A February 24, 1975, letter to Deputy Attorney General Silberman from Paul H. O'Neill, Deputy Director, Office of Management and Budget, noted that OMB had previously instructed the Department to eliminate in FY 1976 the appropriation language requiring the District to reimburse the Treasury (Attachment 4, p. 48). This decision was made "to reflect the intent of Section 731 of the District of Columbia Self-Government and Governmental Reorganization Act . . . which authorizes the District to contract with Federal agencies for the provision of services." The Department followed these instructions (Attachment 5). The OMB letter then went on to request the Department to formulate procedures which would result in a negotiated contract between the District of Columbia and the Department. The ultimate agreement, per provisions of the District of Columbia "Home Rule Act", would be subject to approval by OMB.

An internal Department memorandum dated September 20, 1976, noted as background that this OMB instruction to negotiate a reimbursable agreement with the District "had not been part of the Department's original understanding of what would happen" after the Section 203 reimbursement provision was removed from the Department's appropriation language (Attachment 6). The March 11, 1975, testimony of Assistant Attorney General for Administration Pommerening, given during the 1976 appropriations hearings, confirmed that the Department "took a neutral position" on the OMB decision to delete the reimbursement provision because it had no effect on the Department's operating funds. He noted in further testimony that the negotiation process between the District government and the Department "will be difficult", implying that such negotiations had not yet begun (Attachment 4, p. 47). The Congress accepted the Department's proposed appropriation language changes and eliminated the Section 203 provision from the Department's 1976 Appropriations Act.

The negotiations between the Department and the City were delayed because legal issues were raised regarding the OMB directive to seek a reimbursement contract. An April 24, 1975, letter from Assistant Attorney General for Administration Pommerening to OMB Associate Director Walter Scott raised two issues which the Department asked OMB to review "prior to the initiation of any conversations [between the Department and the District government] to set a framework for negotiating a reimbursement agreement." (Attachment 7). Those issues were raised by the U.S. Attorney's Office and were also considered applicable to the U.S. Marshal. They were: (1) Section 731 of P.L. 93-198 does not apply to the U.S. Attorney and U.S. Marshal because that Section excludes activities required under other statutes, i.e., the activities of the U.S. Attorney and Marshal are performed under other legislative provisions (see citations in Attachments 9 and 14); and (2) the U.S. Attorney's and Marshal's responsibilities which are so required should be allowed to be justified in the resource request documents submitted through the Department rather than those of the D.C. government.

In a May 16, 1975, letter to Assistant Attorney General for Administration Pommerening, OMB Associate Director Scott responded to the issues raised (Attachment 8). His letter disagreed with the Department's view that Section 731 of P.L. 93-198 excluded the services of the U.S. Attorney and Marshal due to the fact that Section 731(a) states that the "terms and conditions governing the performance of such services" must be otherwise prescribed in law. While conceding that other statutory provisions require the performance of U.S. Attorney services in the District, "there is no express or implied limitation that [OMB is] aware of that governs the 'terms and conditions' of furnishing these services." Without the Department's citation of such terms and conditions, OMB considered the exclusionary provision inapplicable to the U.S. Attorney's and Marshal's services.

Regarding the second issue, OMB concluded that the inclusion of the local U.S. Attorney's and Marshal's budget requests in the D.C. government's budget request would be preferable to those requests being part of the Department's budget request, since the services are provided to the District. The letter closed by suggesting that frequent disagreements between the Department and the District over the computation, documentation and justification of costs might be resolved through the completion of negotiations (see also Attachment 1, p. 2).

On June 6, 1975, officials of the Executive Office for U.S. Attorneys, U.S. Attorney Earl Silbert (District of Columbia) and his Principal Assistant U.S. Attorney took the initiative to meet with OMB staff members Smith and Leonard (Attachments 9 and 10). The points raised in the previous exchange of letters were expanded upon. The U.S. Attorney argued that the local prosecution services of the U.S. Attorney are mandated by the Congress (28 U.S.C. §101); their provision is not discretionary on the part of the U.S. Attorney. He concluded that Section 731(a) of the D.C. Self-Government Act covers those services which may or may not be

furnished, i.e., those that are left to the discretion of the contracting agencies. He argued further that the "terms and conditions" of the U.S. Attorney's and Marshal's services are, in fact, specified in other legislative acts, e.g., §173(a)(2) of the D.C. Court Reform Act of 1970 which provides that the District of Columbia shall reimburse to the U.S. the amount necessary "to cover seventy-five per centum of the costs of operation, maintenance, and repair of space used by the United States Attorney and the United States Marshal for the District of Columbia."

The U.S. Attorney expressed his concern that the D.C. government would control the U.S. Attorney's resources under a contractual agreement, yet it would be the U.S. Attorney who would be held responsible by the Congress, OMB and the Department for performance. In that regard he cited the possibility, then carried in the local press, that the city government was reducing local law enforcement by cutting 1,000 police department positions as an example of the precariousness of local funding for law enforcement.

The result of these arguments was that OMB officials Smith and Leonard stated they would not press for a negotiated agreement between the Department and the District government. This position seems to reflect only the views of these two OMB officials and was not necessarily the official position of OMB at the time.

On June 10, 1975, Gilbert Leigh discussed the matter with James Purcell, Chief, Treasury/Justice Branch, OMB. After his discussion with OMB Examiner Leonard, Mr. Purcell said he would reopen the issue. Before this could be done, Don Smith left OMB (Attachment 6, page 2). Subsequent informal conversations between Messrs. Leigh and Purcell resulted in a verbal directive to the Department to let the negotiation of the agreement "die a natural death". This was never transmitted in writing by OMB; it was accepted as fact by the Department, however.

In the fiscal year 1977 budget hearings before the House Appropriations Subcommittee, Assistant Attorney General for Administration Pommerening testified on February 19, 1976, that the reimbursement contract between the District and the Department was "not yet negotiated." (Attachment 11). A subsequent status report submitted for the record noted:

Prior to and following the Department's [fiscal year 1976] testimony, there were exchanges of views on the subject among the Office of Management and Budget, the Department and the U.S. Attorneys [the Executive Office for U.S. Attorneys and the U.S. Attorney for the District of Columbia]. These exchanges have raised issues which have not been resolved; hence there is no reimbursement agreement in force.

The status report stated that the Department intended to renew its efforts to clarify and resolve the issues and "reach cloture on the matter". It seems that while the Executive Branch had at least informally agreed to drop the matter, a question from a Congressman some eight

months later caused the Department to stipulate that the matter would be reopened. No action appears to have been taken, however.

A September 20, 1976, internal memorandum outlines alternatives to be pursued other than the reimbursement arrangement (Attachment 6). A handwritten note dated September 27, 1976, states that Gilbert Leigh had apparently reached an informal understanding with John Komoroske, a new OMB Examiner for the Justice Department (Attachment 12). This understanding was that a reenactment of the previous Section 203 provisions (D.C. reimbursement to the U.S. Treasury) might be sought by OMB if Mr. Komoroske could interest his superior, Joseph Mullinix, the new Chief, Justice/Treasury Branch. This gambit was considered unlikely even in the memo proposing it; no action was taken by OMB or the Department.

The matter appears to have remained dormant until the spring of 1977. In a March 16, 1977, letter from W. Bowman Cutter, OMB Executive Associate Director for Budget, to Associate Deputy Attorney General William B. Gray, OMB resurrected the matter of the reimbursement negotiations (Attachment 13). In this letter, OMB asked the Department to conduct a study of three major topics, to be completed by September 1, 1977, before the preparation of the FY 1979 budget:

- The status quo. [At the time of the writing and also at present, the status quo is that no reimbursement is made to any Federal fund by the D.C. government.]
- Reinstitution of reimbursement system. [Reimbursement per se could have two options: reimbursement by D.C. to the U.S. Treasury (old Section 203 of the Justice Department appropriation) or reimbursement by D.C. to the Department under a contract to be negotiated.]
- Transfer prosecution authority to the D.C. government as an expansion of "Home Rule". [This alternative was new to all discussions. Even though proposed often by the D.C. government, e.g., as in Attachment 1, p.2, this grant of authority had not been made by the Congress when it enacted the Self-Government Act of 1973.]

The study, prepared by the Executive Office for U.S. Attorneys and the U.S. Attorney's Office for the District of Columbia, was transmitted to OMB on September 23, 1977 (Attachment 14). It opposed both the reimbursement arrangement between the City and the Department and the transfer of prosecution authority to the D.C. government. It recommended the retention of local prosecution authority in the Office of the U.S. Attorney, funded by the Federal government. Again the matter seems to have been dropped by OMB, at least for the FY 1979 budget.

During the finalization of the Department's FY 1980 budget, however, OMB advised in its budget allowance handout of November 15, 1978, that the U.S. Attorney's and U.S. Marshal's services to the District should be transferred to the District government in FY 1980 (Attachment 15). This would require the Congress to consider legislation (to be prepared by the Justice Department, per instructions by OMB, as companion proposals to the appropriations request) to grant local prosecution authority to the District government.

The Department opposed this transfer in its appeal letter of November 20, 1978, from the Attorney General to the Director of OMB (Attachment 16, p. 3). The letter indicated that further study of the District's entire criminal justice system would be needed, as was done by the Congress in 1971 and 1973 while considering "Home Rule", rather than immediate action to transfer the responsibilities for prosecution and litigation which are critical to law enforcement.

OMB declined to reconsider its position; the Attorney General appealed in writing to the President on December 13, 1978 (Attachment 17). The issue was resolved between OMB and the Attorney General, apparently without Presidential intervention, such that the transfer of the U.S. Attorney's local prosecution responsibilities would not be requested in FY 1980, although the termination of the U.S. Marshal's local services to the D.C. Superior Court would be requested. Such an action will cause the USMS FY 1980 budget to be reduced by \$2,818,000 and 85 positions (Attachment 18) if Congress accepts the Department's budget request.

The status at present is that legislation will be transmitted by the Department for Congressional action to transfer the U.S. Marshal's Superior Court responsibilities to the D.C. government. The U.S. Attorney's local prosecutive role is unchanged for FY 1980. No reimbursement arrangement exists between the D.C. government and any Federal fund. The U.S. government's unique interest in D.C. law enforcement and litigation continues to be discharged as mandated by law and as funded by the Department.

In its official allowance letter on the FY 1980 budget, dated February 2, 1979, OMB is requiring that the Department transfer the local prosecution authority of the U.S. Attorney to the D.C. government beginning in FY 1981. OMB has requested that a formal transfer plan be submitted by March 30, 1979 (Attachment 19, p. 2).

LIST OF ATTACHMENTS

1. Letter from Comer S. Coppie, Special Assistant to the District of Columbia Mayor-Commissioner, to Glen E. Pommerening, Assistant Attorney General for Administration, April 17, 1974.
2. Public Law 93-198, District of Columbia Self-Government and Governmental Reorganization Act (December 24, 1973), Sec. 731, Agreements with United States.
3. Letter from Mr. Pommerening to David M. Bray, OMB Deputy Associate Director for Economics and General Government, December 19, 1974.
4. Report of the House Appropriations Subcommittee, Department of Justice Hearings, FY 1976, pp. 47-48.
5. Department of Justice FY 1976 Congressional Budget, Proposed Language Changes, pp. 22-23. Cited in the Report of the House Appropriations Subcommittee, Department of Justice Hearings, FY 1976, pp. 23-24.
6. Memorandum from James F. Hoobler, Director, Management Programs and Budget Staff, Office of Management and Finance, Justice Department, to Mr. Pommerening, September 20, 1976.
7. Letter from Mr. Pommerening to OMB Associate Director Walter Scott, April 24, 1975.
8. Letter from Mr. Scott to Mr. Pommerening, May 16, 1975.
9. Memorandum to Files from Carl S. Rauh, Principal Assistant United States Attorney (District of Columbia), June 9, 1975.
10. Memorandum to Files from Francis X. Mallgrave, Executive Office for United States Attorneys, June 18, 1975.
11. Report of the House Appropriations Subcommittee, Department of Justice Hearings, FY 1977, pp. 399-400.
12. Handwritten note to Files from Gilbert M. Leigh, Deputy Director, Management Programs and Budget Staff, September 27, 1976.
13. Letter from W. Bowman Cutter, OMB Executive Associate Director for Budget, to William B. Gray, Associate Deputy Attorney General, March 16, 1977.
14. Letter from William P. Tyson, Acting Director, Executive Office for United States Attorneys, to Mr. Cutter, September 23, 1977. Appended is the 33-page Study of Prosecution Functions.

15. Budget Allowance Handbook from OMB given to Department budget officials on November 15, 1978.
16. Excerpt of the FY 1980 Budget Appeal Letter from Attorney General Griffin B. Bell to James T. McIntyre, Jr., Director, OMB, November 20, 1978.
17. Undated Memorandum from the Attorney General to the President, transmitted December 13, 1978.
18. Memorandum from Kevin D. Rooney, Assistant Attorney General for Administration, to William E. Hall, Director, United States Marshals Service, January 9, 1979.
19. Letter from Mr. McIntyre to the Attorney General, February 2, 1979, p. 2.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE

SPECIAL ASSISTANT TO THE
MAYOR-COMMISSIONER
DIRECTOR, OFFICE OF BUDGET AND
FINANCIAL MANAGEMENT



REPLY TO:
ROOM 423, DISTRICT BUILDING
14TH & E STREETS, N. W.
WASHINGTON, D. C. 20004

Mr. Glen R. Pommerening
Assistant Attorney General
for Administration
Room 1111
Department of Justice
Washington, D. C. 20530

APR 17 1974
DEPT. OF JUSTICE
MAIL ROOM
GROM

APR 20 10 50 AM '74

Dear Mr. Pommerening:

This communication is to advise you of recent actions taken by the District of Columbia government with respect to the District's reimbursement for 53 percent of expenditures of the offices of the U. S. Attorney and U. S. Marshal for the District of Columbia.

The City Council, in its review of the reimbursement request of \$6,625,000, noted in its budget report:

"The city is requested to reimburse the Treasury in FY 1975 for costs totalling \$6,625,000 at a rate of 53 percent. Thus the total cost to which the formula was applied is \$12,500,000. The Public Safety Committee notes that the total cost of the Department of Justice services in FY 1972 was \$3,902,000 (the city obligation using a 75 percent formula was \$6,676,500). Within three fiscal years the city, with little or no information provided, is faced with a 50% increase in a program over which it exercises no control.

In light of these facts the Public Safety Committee cannot recommend approval of the request as submitted. Therefore, the Committee recommends that the Council follow the lead of the Congress and freeze the appropriation at the FY 1974 level.

The Committee recommends that a funding level of \$5,732,500 (53% of the FY 1974 total cost - \$10,816,000), \$892,500 below the amount requested, be approved.

While the Committee does not recommend approval of the reimbursement as submitted, the Committee's action is not based on dissatisfaction with the services provided by the U. S. Attorney and the U. S. Marshal. The Committee is fully aware of the excellence of the two offices. Rather the Committee action is predicated upon the lack of information before it and the total lack of city control over the services which it is requested to fund. Furthermore, the Committee believes that the District of Columbia must have a local prosecutor's office, funded by the

APR 22 1974

O.R.G.M.

OFFICE OF MGT. & FINANCE

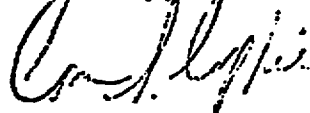
city and subject to city goals and priorities, just as is the situation in virtually every other jurisdiction. The committee is hopeful that with the advent of Home Rule this will be accomplished."

The Mayor did not veto the action of the City Council, but did note that a supplemental request might be required if the amount requested for the reimbursement proved insufficient.

In the detailed budget justifications transmitted to the Congress, the District has indicated that it will continue to work with the Department of Justice in developing more refined program and financial information. The detailed justifications include the workload data sent to my office on February 6, 1974, by Mr. William D. Van Stavoren; hopefully that information, and the audit report sent by you to my office on November 5, 1973, will serve as a basis for continued development of the information required by the City Council and the Congress.

I am, of course, available to furnish any additional information on this matter you may desire. I will be in touch with your office on refining financial and program information after the conclusion of Congressional hearings on the District's fiscal 1975 budget.

Sincerely,



Comer S. Coppie
Special Assistant to
the Mayor-Commissioner

December 24, 1973

- 49. -

Pub. Law 93-198

57 STAT. 822

(c) Subject to the limitations contained in section 603(b), there are authorized to be appropriated such sums as may be necessary to make loans under this section. Appropriation, 48 Stat. p. 814.

PART D—MISCELLANEOUS

AGREEMENTS WITH UNITED STATES

Sec. 731. (a) For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District government and any District officer or agency may furnish services to the Federal Government. Except where the terms and conditions governing the furnishing of such services are prescribed by other provisions of law, such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned, and (2) approved by the Director of the Federal Office of Management and Budget and by the Mayor. Each such agreement shall provide that the cost of furnishing such services shall be borne in the manner provided in subsection (c) by the government to which such services are furnished at rates or charges based on the actual cost of furnishing such services. Federal government services.

(b) For the purpose of carrying out any agreement negotiated and approved pursuant to subsection (a), any District officer or agency may in the agreement delegate any of his or its functions to any Federal officer or agency, and any Federal officer or agency may in the agreement delegate any of his or its functions to any District officer or agency. Any function so delegated may be exercised in accordance with the terms of the delegation. Delegation of functions.

(c) The cost to each Federal officer and agency in furnishing services to the District pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations available to the District officers and agencies to which such services are furnished. The costs to each District officer and agency in furnishing services to the Federal Government pursuant to any such agreement are authorized to be paid, in accordance with the terms of the agreement, out of appropriations made by the Congress or other funds available to the Federal officers and agencies to which such services are furnished, except that the Chief of the Metropolitan Police shall on a nonreimbursable basis when requested by the Director of the United States Secret Service assist the Secret Service and the Executive Protection Service in the performance of their respective protective duties under section 3056 of title 18 of the United States Code and section 302 of title 3 of the United States Code. Costs, pay- ment. U. S. Secret Service and Executive Protection Service. Metropolitan police assistance.

PERSONAL INTEREST IN CONTRACTS OR TRANSACTIONS

Sec. 732. Any officer or employee of the District who is convicted of a violation of section 208 of title 18, United States Code, shall forfeit his office or position. 65 Stat. 122; 64 Stat. 1941. 65 Stat. 712. 76 Stat. 1124.

COMPENSATION FROM MORE THAN ONE SOURCE

Sec. 733. (a) Except as provided in this Act, no person shall be ineligible to serve or to receive compensation as a member of the Board of Elections because he occupies another office or position or because he receives compensation (including retirement compensation) from another source.

(b) The right to another office or position or to compensation from another source otherwise secured to such a person under the laws of the

GEP:JFH:GIL:dyb
12/16/74

DEC 19 1974

Mr. David M. Gray
Deputy Associate Director
Economics and General Government
Division
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Gray:

On December 13, 1974, Mr. Gilbert Leigh of my staff attended a meeting at the office of Mr. Donald Smith of the Office of Management and Budget which was also attended by Mr. Homer Coppie, Budget Director for the District of Columbia. At that meeting, Mr. Coppie proposed that language concerning a reimbursement by the District of Columbia to the U.S. Treasury for services of the U.S. Attorney and U.S. Marshal in the District of Columbia be dropped. This letter expresses the view of the Department regarding that proposal.

The language in question is to be found as Section 203 of the FY 75 General Provisions for the Department of Justice. The reimbursement has been in effect since 1935 at varying rates. The Department acts as a billing agent and funds are transferred by the U.S. Treasury from the District of Columbia's accounts to the General Fund account. The transaction has no impact at all on the budget of the Department of Justice and there is no perceivable advantage or disadvantage to the Department in retaining or eliminating the language. We neither propose nor oppose the elimination of the language for this reason.

From the way the reimbursement works, it is likely that elimination of the language would have some impact in reducing overall receipts in the Federal treasury. We do not believe we are in a good position to assess this factor.

The Department of Justice defers to the Office of Management and Budget on the question of whether or not the language should be retained.

Sincerely,

cc: Hoobler/file
Hoobler/reading
~~Leigh~~
BIG
PMG I
PMG II
PMG III

Glen E. Posnering
Assistant Attorney General (I)
for Administration

POSITIONS AND VACANCIES

Mr. SLACK. How many permanent positions are presently authorized for the Department of Justice?

Mr. POMMERENING. 50,596.

Mr. SLACK. How many of those are vacant?

Mr. POMMERENING. As of March 11, 1975, 1,069.

Mr. SLACK. How many additional positions are you requesting for fiscal year 1976?

Mr. POMMERENING. 1,195, Mr. Chairman.

CHANGES IN GENERAL PROVISIONS

Mr. SLACK. I would like to refer now to page 171 of the committee print with respect to general provisions.

As shown on page 171 of the committee print and on page 23 of your justifications, you are requesting deletion of section 203, which deals with reimbursement by the District of Columbia for a portion of the cost of the U.S. attorneys and U.S. marshal's office in the District of Columbia?

Mr. POMMERENING. That is correct.

Mr. SLACK. On page 23 of the justifications you state, and I quote:

It is no longer required to stipulate through language the percentage at which the District of Columbia must reimburse the Treasury of the United States for expenditures of the office of the U.S. attorney and U.S. marshals.

What do you mean by that statement?

Mr. POMMERENING. Mr. Chairman, last year the Congress in its wisdom and the President by his signature changed the relationship of the District of Columbia to the Federal Government. Subsequent to that, the District government requested of OMB that this provision be deleted. OMB consulted with the Department.

As you well know, the impact of this provision has no effect upon the Department. We took a neutral position. The funds, 53 percent of the costs of these two offices, accrued to the general funds of the United States. They do not affect our budget.

OMB in its negotiations with the District decided it was prudent to remove this provision and to direct us, the Department of Justice, to negotiate with the District of Columbia a reimbursable agreement so that the funds or the actual costs of the services which we render would accrue back to the United States.

Mr. SLACK. Is it a fact that the District of Columbia still reimburses the Federal Government for services by these offices?

Mr. POMMERENING. It is, Mr. Chairman. The problem may be that the process of negotiation will be a difficult one and whether it arrives at 53 percent of the cost or not I don't know.

Mr. CEDERBERG. Why should it be difficult?

Mr. POMMERENING. I would presume, Mr. Cederberg, the District would not want to reimburse any more than they have to. We would try to get just as much of the costs as we could.

Mr. SLACK. Is there a requirement that the reimbursement be made?

Mr. POMMERENING. Yes.

Mr. SLACK. Would you cite that for the record?

OMB LETTER CONCERNING REIMBURSEMENT BY D.C. GOVERNMENT

Mr. POMMERENING. Certainly. I have a letter in my file which I will insert in the record from the Office of Management and Budget, instructing us to negotiate and receive a reimbursable agreement with the District.

[The letter referred to follows:]

FEBRUARY 24, 1975.

Mr. LAURENCE H. SILBERMAN,
Deputy Attorney General,
Department of Justice, Washington, D.C.

DEAR Mr. SILBERMAN: The President's budget for the fiscal year 1976 proposed that the appropriation language requiring that the District of Columbia reimburse the Treasury of the United States for services provided by the U.S. attorneys and marshals be eliminated.

This decision has been made at this time to reflect the intent of section 731 of the District of Columbia Self-Government and Governmental Reorganization Act, Public Law 93-198, which authorizes the District to contract with Federal agencies for the provision of services, and authorizes Federal agencies to provide such services.

This letter is to request that you formulate procedures for negotiating a contractual arrangement for those services provided to the District of Columbia by the Department of Justice.

The procedures established will serve as the basis for a reimbursable agreement between the District of Columbia and the Department of Justice in the future. As provided in section 737 of Public Law 93-198 such an agreement would be subject to approval by the Director of the Office of Management and Budget. My staff will be in contact with yours to begin initial discussions.

Sincerely,

(Signed) PAUL H. O'NEIL,
Deputy Director.

Mr. SLACK. Do you know how long this provision has been carried in your appropriations act?

Mr. POMMERENING. It has been for a long, long time, Mr. Chairman. I can cite you that.

Mr. LERIC. Since 1941, Mr. Chairman.

COMPENSATION OF LAND COMMISSIONERS

Mr. SLACK. On page 172 of the committee print, Mr. Pommerening, you show a request for a new general provision, namely section 27. Since this provision deals with a single appropriation item for Justice, why don't you request it as a proviso in that item? Before you respond, the way it is written it would be my opinion that it is legislation and subject to a point of order. It could be written as a limitation and therefore not subject to a point of order.

Mr. POMMERENING. Mr. Chairman, the compensation of land commissioners who are appointed by the Federal judges is an area which is beyond the control of the Department. We have, as you know, heard our supplemental budget request, a problem in trying to administer this. I have discussed this problem with Mr. Kirks, the Director of the Administrative Office of the U.S. Courts, and he concurs; we should limit the compensation which the Federal judiciary award to the land commissioners.

If you, Mr. Chairman, and the committee, have suggestions in the wording of the limitation, we would be happy to amend it to accomplish the goal that we suggest.

1. New language is proposed for the authorization of the purchase of three additional aircraft for the purpose of law enforcement and for the purpose of law enforcement.
2. Language is proposed to limit the purchase of aircraft to law enforcement only and to prohibit further the purchase of aircraft for law enforcement.
3. Language is proposed to fund research for the study of illegal immigration patterns and the development of potential regulations to curb these patterns, and to establish a 10-year limitation account not to exceed \$400,000.
4. New language is proposed to permit expenditure of \$51,000,000 during the transition period, July 1, 1976, through September 30, 1976.

Federal Prison System

1. Language is proposed to decrease the number of passenger motor vehicles which can be purchased and increase the number of vehicles which can be purchased for replacement only.
2. New language is proposed to permit the expenditure of funds during the transition period for each Federal Prison System account.
3. The provision allocating current year budget authority in the Support of United States Prisoners account to be available for payment of Fiscal Year 1976 obligation is proposed for deletion.

Law Enforcement Assistance Administration

New language is proposed to permit expenditure of \$195,000,000 during the transition period, July 1, 1976, through September 30, 1976.

Drug Enforcement Administration

1. Increases are proposed for the limitations on passenger motor vehicles for both total authorized and replacement only.
2. New language is proposed to permit expenditure of \$15,000,000 during the transition period, July 1, 1976, through September 30, 1976.

GENERAL PROVISIONS

Justification of Proposed Language Changes

The 1976 budget estimates include proposed changes in appropriation language listed and explained below. New language is underlined and deleted matter is enclosed in brackets.

GENERAL PROVISIONS—DEPARTMENT OF JUSTICE

Sec. 202. None of the funds appropriated by this title may be used to pay the compensation of any person hereafter employed as an attorney (except foreign counsel) employed in special cases unless such person shall be duly licensed and authorized to practice as an attorney under the laws of a State, territory, or the District of Columbia.

Sec. 203. Fifty-three per centum of the expenditures for the office of the United States Attorney for the United States District for the District of Columbia from all appropriations in this title shall be retained to the United States from any funds in the Treasury of the United States to the credit of the District of Columbia invested, that notwithstanding the expiration of this section, not to exceed \$1,500,000 from any funds in the Treasury of the United States to the credit of the District of Columbia shall be available for replacement to the United States pursuant to this section.

[Sec. 205] Sec. 203. Appropriations and authorizations made in this title which are available for expense of attendance at meetings shall be expended for such purposes in accordance with regulations prescribed by the Attorney General.

This clause would transfer Section 704 to Section 203.

[S.C. 205.] Sec. 204. Appropriations made in this title for salaries and allowances shall be available for services authorized by U.S.C. 3109.

This chapter would appear Section 20, to Section 204.

[Sec. 20.] On 25. As representative for the current fiscal year for "Salaries and expenses," "General administration," "Publicity and equipment," "United States attorneys and marshals," "Salaries and expenses," "Federal Bureau of Investigation," "Salaries and expenses," "Immigration and Naturalization Service," and "Salaries and expenses," Bureau of Prisons," shall be available. All allocations therefor are authorized by law (U. S. C. 5901-5903, 5905).

The first step would require about 25% to 30% of the

The Little Field would attract attention because it was the first of its kind.

[Sec. 207] See. 206. Appropriations made in this title shall be available for the purchase of insurance for motor vehicles operated on official Government business in foreign countries.

and a clause would remove Section 207 to Section 206.

Sec. 307. Copyrights for had certain persons covered under the registration "Fee and
extension of rights" which is at a daily rate not to exceed the equivalent daily rate of
extension of rights. The fee is to be paid to the Copyright Office.

This provision would entitle the Corporation for just compensation at not more than the daily rate of a union is on the contract concerned.

...and, in each class, available for the period July 1, 1976 through September 30, 1976 shall be given a final decision by the reviewing body of government or other authority of the District of Columbia. The final decision shall be based on the merits of the case.

Attest:

This provision makes available appropriations during the transition period, July 1, 1976, through September 30, 1976, for the purchase of one-fourth of the number of new vehicles authorized (for replacement purposes only) for such appropriation in the Department of Justice Appropriation Act, 1976. This would be for the number of vehicles authorized for such appropriation in the Department of Justice Appropriation Act, 1976 request.

DATE: 10/10/76 TIME: 10:10 AM

[illegible]

This provision stipulates that none of the amounts appropriated for the transition period will be used for the purchase of aircraft, except that in an emergency and upon the certificate of the Secretary General, an amount not to exceed \$100,000 may be used for the replacement of aircraft.

UNITED STATES GOVERNMENT

Memorandum

TO : Glen E. Pommerening
Assistant Attorney General for Administration

DATE: SEP 20 1976

FROM : James F. Hoobler, Director
Management Programs and Budget Staff

SUBJECT: District of Columbia Reimbursement for Services of the U.S. Attorney and U.S. Marshal in the District of Columbia

This is to recap and propose alternatives for resolving the problem we have regarding reimbursements by the District of Columbia Government for the costs of the U.S. Attorney's and U.S. Marshal's offices in the District of Columbia (D.C.).

BACKGROUND.

Since about 1947, section 203 of the General Provisions of the Department's appropriation act provided that the D.C. Government was to reimburse the U.S. Treasury for a stipulated percentage of the costs of the U.S. Attorney's and U.S. Marshal's offices in D.C. That provision was inserted originally by our House Subcommittee on Appropriations.

Prior to the formulation of the FY 1976 budget, Don Smith, an OMB examiner for the Department's budget, and Bill Leonard, OMB examiner for the D.C. budget, asked Gilbert Leigh of the Department of Justice to attend a meeting with them and Comer Coppie of the D.C. Government, to discuss this reimbursement. The purpose of the meeting was to determine the Department's reaction if section 203 were deleted. After the meeting, the Department responded in writing that the proposal had no financial or programmatic impact on the Department since the Department received neither credit nor use of the funds, that the Department neither proposed nor opposed the suggestion, that it seemed to involve Treasury fiscal balances more than anything else, and that the matter was up to OMB. OMB deleted the provision from the FY 1976 budget.

Subsequently, Paul O'Neill, OMB Deputy Director, instructed the Department in writing to negotiate a true reimbursable agreement for these services with the D.C. Government. This development had not been part of the Department's original understanding of what would happen. Nevertheless, we tried in writing to get negotiations initiated with the U.S. Attorney and U.S. Marshal in the District.



The U.S. Attorney raised several major objections, some of which were communicated to OMB in a letter to Walter D. Scott, OMB Associate Director for Economics and Government, dated April 24, 1975. Mr. Scott replied on May 16, 1975, in a letter to Glen E. Pommerening, Assistant Attorney General for Administration, essentially directing the Department to proceed with developing a reimbursable agreement.

On June 6, 1975, personnel from the D.C. U.S. Attorney's office and the Executive Office for U.S. Attorneys met privately with Don Smith and Bill Leonard to discuss the U.S. Attorney's reservations on the matter. The U.S. Attorney and his principal assistant noted their impression of the meeting as follows:

Don Smith and Bill Leonard seemed impressed by our arguments and stated that they would not go forward with their proposal at this time.

Finally, we suggested that if the proposal came up again an Attorney General's legal opinion on the meaning of Sec. 731(a) [of the D.C. Self-Government Act of 1973] could be sought from the Office of Legal Counsel.

On June 10, 1975, Gilbert Leigh discussed the item with James Purcell, Chief of the Treasury/Justice Branch in OMB, who had not been apprised of the meeting. He also discussed it with Bill Leonard, who had advised his superior and said he would reopen the issue. Before this could be done, Don Smith left OMB.

Mr. Leigh raised the matter several times in conversation with Mr. Purcell in an effort to get a written clarification of OMB's position. Mr. Purcell was not able to provide it in writing, but he advised Mr. Leigh that there was no one left at OMB who knew or cared anything about the agreement and that the Department should allow it to die a natural death. Over the past year, Mr. Leigh had discussed it with OMB staff a number of times, but no one there has focussed on whether or not the Department is still expected to negotiate an agreement.

In the meantime, the Department was embarrassed in its testimony on the FY 1977 budget before the House Subcommittee when it had to say that there is no reimbursable agreement. The Department made a commitment to resolve the issue.

CURRENT SITUATION.

There has been no resolution to the issue and we are formulating the FY 1978 budget. We can expect to be asked about the reimbursable agree-

ment by the House Subcommittee. Mr. Leigh has once again opened discussions with OMB on the subject, but with so many new personnel, it may be some time before OMB is really prepared to respond. However, we believe that OMB should provide assistance and leadership in dissolving the impasse because the change came from OMB and it was OMB's examiners who "muddied the waters" of OMB's intent when they met with the U.S. Attorney.

OPTIONS.

1. Seek a legal opinion. We could raise the matter again with the U.S. Attorney's office and, if they raise their old objections, suggest that they act on their threat to seek a legal opinion from the Office of Legal Counsel.

2. Negotiate an agreement. This is self-evident.

3. Keep the status quo. The situation could be left as it is now, with OMB advising us in writing that an agreement with D.C. is no longer required. This would forestall the problem of U.S. Attorney cooperation and allow us to testify that OMB had let us off the hook. On the negative side, the District would continue to get a "free ride." [NOTE: The "free ride" argument is inconsistent with the U.S. Attorney contention that the Federal Government has a unique interest in D.C. law enforcement and litigation, which they use to argue against the level of control that a reimbursable agreement would give D.C. It is also to be noted that the special interest argument is the position taken by the Department when the D.C. Self-Government and Court Reorganization Acts were being done to rationalize a greater Federal role than D.C. wanted us to have. If the Federal role is in the Federal interest, then D.C. is not getting a "free ride."]

4. Revert to the former arrangement. We could take the position that OMB should reinstitute the old section 203. This would have no effect on the Department; the House Subcommittee might find it amusing; the D.C. Government undoubtedly would oppose it; and we are not certain now whether or not OMB could manage it.

5. Compensate for the windfall. OMB could reduce the FY 1978 D.C. budget base by the amount they would have had to reimburse the Treasury, thereby eliminating the windfall of \$6 million that D.C. got when section 203 was eliminated. The District would no longer be getting a "free ride" in a sense, and the Department would be out of the transaction entirely. However, D.C. would assuredly oppose such a solution vigorously.

How should we approach this problem?

April 24, 1975

Mr. Walter D. Scott
Associate Director for
Economics and Government
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Scott:

The FY 75 President's Budget contains the deletion of Section 203 of the General Provisions, which provided for reimbursement by the District of Columbia to the United States Treasury of 53% of the costs of U.S. Attorney's and U.S. Marshal's offices in the District of Columbia. The Department neither opposed nor proposed this deletion. Subsequently, Mr. Paul O'Neill, Deputy Director of the Office of Management and Budget (OMB), sent a letter to the department which cited Section 731 of P.L. 93-195, District of Columbia Self-Government and Governmental Reorganization Act, and instructed the department to work with OMB and the District of Columbia Government to establish a reimbursement arrangement for services rendered.

The U.S. Attorney's office for the District of Columbia has raised some basic questions which, I understand, also represent the views of the U.S. Marshals Service. The first point raised is that Section 731 does not apply in this case because it excludes activities required under other statutes, and the activities performed by the U.S. Attorney and the U.S. Marshal are performed under other legislative provisions. The second point raised is that the U.S. Attorney and the U.S. Marshal for the District of Columbia have extensive responsibilities which they are required to perform, and they feel that they should have the authority to justify their full resource needs to perform their responsibilities through the Department.

We urge that these points be reviewed at OMB prior to the initiation of any conversations to set a framework for negotiating a reimbursement agreement.

Sincerely,

cc: Pommerening
Scott
Hoobler
Leigh

Glen E. Pommerening
Assistant Attorney General
for Administration

BMC
PAC I
PAC II
PAC III
Reading



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 20 2 20 PM '75

MAY 16 1975 DEPT. OF JUSTICE

Admin. Counsel
Information Systems
Internal Audit
Library
Mgmt. Programs & Budget
Operations Support
Personnel & Training
Security & Admin. Services
Special Assistants
Publication Services

Mr. Glen Pommerening
Assistant Attorney General
for Administration
Department of Justice
Washington, D.C. 20530

Dear Mr. Pommerening:

Thank you for your letter of April 24, 1975, expressing the concerns of the U.S. Attorneys and Marshals of the District of Columbia regarding establishment of a reimbursement agreement between the District and the Department. At the time the decision was made that reimbursement would be preferable to the current procedure the issues surrounding this relationship were fully discussed, and they are further discussed below. In addition, there are several other reasons why we continue to consider this an appropriate course of action and these are also discussed.

Your letter states that Section 731 of P.L. 93-198 is inapplicable to the U.S. Attorneys and Marshals because other statutes require the performance of certain functions by the U.S. Attorneys and Marshals in the District. The interpretation that services required by law are excluded from consideration as possible candidates for a reimbursable arrangement would appear to be at variance with Section 731(a). Section 731(a) specifies that the "terms and conditions governing the furnishing of such services" must be otherwise prescribed in law, not the requirement of performance of the service. While we agree that other statutory provisions may require performance of the service, there is no express or implied limitation that we are aware of that governs the "terms and conditions" of furnishing these services. If you are able to provide references for such limitations, we will review them.

The second issue raised in your letter is that the U.S. Attorneys and Marshals have "extensive responsibilities which they are required to perform" and, as such, "they should have the authority to justify their full resource needs" through the Department. We fully agree with the notion that requests for

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ADMINISTRATIVE SERVICES
FOR ADMINISTRATION

OPERATIONS SUPPORT STAFF
Accounting Sec.

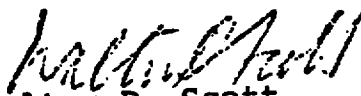
resources should be justified before the Congress. However, we believe there is a distinction between the needs of the District and the needs of the Federal Government which must be recognized. While recognizing a certain degree of fungibility in the utilization of manpower in the District, we believe it desirable to establish, if only for budgeting and accounting purposes, indicators of the resources devoted to District as distinct from Federal activities. Such indicators are essential to the management and operations of the U.S. Attorney's and Marshal's offices and we would expect them to be available regardless of the issue at hand.

It has concerned both the District and us for sometime that there has been a lack of documented justification to support the charges made to the District for services provided by the Attorneys and Marshals. The inadequacy of supporting data resulted, in fact, in a Congressional action reducing the 1974 reimbursement from \$10,125,000 to \$7,821,700. Such problems would be largely eliminated with the establishment of a negotiated agreement requiring justification of service levels, costs and performance. Further, this is consistent with the policy guidance in the 1976 allowance letter directing you to improve litigative data and management systems.

Finally, from the viewpoint of the Federal Government and its relationship with the District of Columbia, we see the commencement of negotiations between the Justice Department and the District as an important, precedent setting action which will guide future agreements.

We continue to support the change in appropriation language proposed in the 1976 budget. My staff will be in touch with yours shortly to begin discussions on this matter.

Sincerely,


Walter D. Scott
Associate Director for
Economics and Government

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE
ATTACHMENT 9

Memorandum

TO : Files

DATE: June 9, 1975

FROM : Carl S. Rauh
CR Principal Assistant
United States Attorney

SUBJECT: OMB Proposal for U. S. Attorney to Contract with
D. C. Government for Reimbursement of Superior
Court Operations

On Friday morning, June 6, 1975, an hour long meeting was held in my office to discuss the above-mentioned subject. Present at the meeting, in addition to myself, were Don Smith and Bill Leonard from OMB, Larry McWhorter and Frank Malgrave from the Executive Office of U. S. Attorneys and U. S. Attorney Earl Silbert.

The OMB proposal was based on §731(a) of the D. C. Self-Government Act of 1973, which provides that "For the purpose of preventing duplication of effort or for the purpose of otherwise promoting efficiency and economy, any Federal officer or agency may furnish services to the District Government . . . such services shall be furnished pursuant to an agreement (1) negotiated by the Federal and District authorities concerned"

Mr. Silbert and I argued that this provision clearly did not cover the U. S. Attorney's Office because the services that we perform in prosecuting offenses against the United States which are local in nature are mandated by acts of Congress. 28 U.S.C. §547; 23 D.C. Code §101. We have no discretion not to perform these functions. The section of the D. C. Self-Government Act relied on by OMB covers those services which may or may not be furnished and is left to the discretion of the contracting agencies. We argued further that we prosecute D. C. Code offenses in the local D.C. Article I courts because they are acts of Congress and not for the purpose of "preventing duplication of effort" or "promoting efficiency and economy."

We also pointed out that at least in part "terms and conditions governing the furnishing of such services are prescribed by other provisions of law" which brings the U. S. Attorney's Office within the exception of §731(a). We referred to §173(a)(2) of the D. C. Court Reform Act of 1970 which provides that the District of Columbia shall reimburse to the United States the amount necessary "to cover seventy-five per centum of the costs of operation, maintenance, and repair of space used by the United States Attorney and the United States Marshal for the District of Columbia."

With respect to the practical aspects of our contracting with the D. C. Government, we expressed our concern that D. C. would maintain control over our resources yet we would be held responsible for our performance. In this regard, we pointed out the recent newspaper articles that the city government was cutting back the police department by 1000 persons.

Frank Malgrave pointed out that the reimbursement arrangement between the Federal and D. C. Government which had been in effect for many years really didn't make a great deal of sense since the Congress would appropriate monies to D. C. which would be returned to the Federal treasury to reimburse the Federal Government for services of the U. S. Attorney.

Don Smith and Bill Leonard seemed impressed by our arguments and stated that they would not go forward with their proposal at this time.

Finally, we suggested that if the proposal came up again an Attorney General's legal opinion on the meaning of §731(a) could be sought from the Office of Legal Counsel.

cc: Mr. Silbert
Mr. Greene
Mr. Gill
Mr. Malgrave
Mr. McWhorter

UNITED STATES DEPARTMENT OF JUSTICE

MEMORANDUM TO FILES

FROM: FRANCIS X. MALLGRAVEREGARDING: PAGE 2DIVISION: DAGOFFICE: EOUSAPHONE #: 739-5021

DATE: _____

STATEMENT:

As an offsetting entry and in compliance with Section 731, PL93-198, they proposed that the D.C. government and the Justice Department negotiate a reimbursement agreement.

Mr. Mallgrave questioned the rationale as to the need for the original reimbursement arrangement between the D.C. government and the U. S. Treasury. No one in the meeting seemed to be able to account for, or justify the existence for such an agreement.

Mr. Leonard pointed out the policy issue to be resolved with regard to reimbursing the Treasury for the funds that were previously taken care of by the D.C. government. If the D.C. government is no longer required to make a reimbursement to the Treasury, a reimbursement would have to be made from another source or an offsetting adjustment would have to be made from the outlays. It was agreed that the infinitesimal sum for reimbursement to the Treasury was not a factor to be concerned with at present.

Mr. Rauh and Mr. Silbert both placed heavy emphasis on the interpretation of Section 731, PL93-198. In the opinion of Mr. Rauh, this language was not applicable to our situation. The language stated that a contract would be negotiated for services. It implied a discretionary provision for services when, in fact, the U. S. Attorneys under both the D.C. Code and U.S. Code are mandated to provide services. It is not a negotiable matter, nor is there any discretion as to the provision of legal services. Additionally, Mr. Rauh pointed out that the D.C. Court Reform Act provided a condition with respect to the U. S. Attorney's office which further precluded that office from the provision of PL93-198.

UNITED STATES DEPARTMENT OF JUSTICE

MEMORANDUM TO FILES

FROM: FRANCIS X. MALLGRAVE

REGARDING: PAGE 3

DIVISION: DAG

OFFICE: EOUSA

PHONE #: 739-5021

DATE: _____

STATEMENT: The meeting reached a conclusionary point with Mr. Smith and Mr. Leonard both indicating that they would take no further action in pursuing the need for a contract for services or a reimbursement agreement between the U.S. Attorneys office and the D.C. government. They would leave the matter as is, subject to the review of the D.C. budget by the House D.C. Appropriations Committee and by the Senate D.C. Appropriations Committee.

It was apparent that the issue was not entirely resolved but merely delayed at least for Fiscal Year 1976. Mr. Smith further indicated that he would get back to the Justice Department and advise them of this understanding. Also, this would have to be worked out with the superiors of Messrs. Smith and Leonard.

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Mr. GRAY. Mr. Chairman, last year we had four trial advocacy sessions and we plan six for this year. An average of 50 lawyers attend as students in each of those seminars and additional lawyers attend as instructors, but we feel that the instructors also gain instruction as they participate in the seminar. We also conducted several continuing legal education and specialized conferences in the area of white-collar crime, Indian affairs, and environmental law. In addition, we plan to conduct two or three management conferences within this year for key administrative personnel within the U.S. attorney's office.

Mr. SLACK. What is the total amount included in your budget for this item?

Mr. GRAY. Mr. Chairman, for the Attorney General's Advocacy Institute the total amount requested is \$734,000.

DISTRICT OF COLUMBIA REIMBURSEMENT

Mr. SLACK. The fiscal year 1976 appropriation excluded the provision formerly carried in your bill which required the District of Columbia to reimburse the Department for a percentage of the cost of the U.S. attorney's and U.S. marshal's office for the District of Columbia. As I understand it, there is an agreement between the Department of Justice and the District of Columbia with respect to this reimbursement. Is that correct?

Mr. MAILGRAVE. No, sir, at this time there is no formal agreement that has been worked out between the District of Columbia Government and the offices of the U.S. attorneys. I don't know about the Department of Justice.

Mr. POMMERENING. It is my understanding, Mr. Chairman, that the reimbursement is pending further arrangements if any are to be made.

Mr. SLACK. Is there any agreement in this area?

Mr. POMMERENING. I would have to check on that.

Mr. SLACK. If you have it, would you please submit it to me for inclusion in the record.

Mr. POMMERENING. Yes.

[The following statement was supplied after the hearing:]

STATUS OF REIMBURSEMENT AGREEMENT WITH DISTRICT OF COLUMBIA

Prior to submission of the fiscal year 1976 budget, the Office of Management and Budget requested the Department of Justice's views on a proposal to delete that section of the general provisions which required the District of Columbia to reimburse the U.S. Treasury for a part of the costs of the offices of the U.S. Attorney and the U.S. Marshal in the District. The Department took a neutral stance, as the matter had no effect on its budget or program.

The provision was deleted in the 1976 President's budget and the Office of Management and Budget advised the Department that it was necessary to open discussions with the District of Columbia to reach a reimbursement agreement between the Department and that government for these services. The Department testified to that effect before the House Subcommittee on Appropriations for the Department of Justice.

Prior to and following the Department's testimony, there were exchanges of views on the subject among the Office of Management and Budget, the Department and the U.S. attorneys. These exchanges have raised several issues which have not been resolved; hence, there is no reimbursement agreement in force. The Department intends to renew its efforts to clarify and resolve the issues and reach closure on the matter.

Mr. SLACK. As I understand it, the reimbursement required in fiscal year 1975 was 53 percent of the expenditures of the office of U.S. attorneys and U.S. marshals for the District of Columbia.

Mr. POMMERENING. That is correct, Mr. Chairman.

Mr. SLACK. Can you tell us what that percentage might be for the current fiscal year?

Mr. POMMERENING. I believe it would be the same, Mr. Chairman.

Mr. SLACK. The same.

Thank you very much, Mr. Gray and gentlemen.

Mr. GRAY. Thank you, Mr. Chairman.

THURSDAY, FEBRUARY 19, 1976.

UNITED STATES MARSHALS SERVICE

WITNESSES

WAYNE B. COLBURN, DIRECTOR
WILLIAM E. HALL, DEPUTY DIRECTOR
WILLIAM H. RUSSELL, ASSISTANT DIRECTOR FOR ADMINISTRATION AND FINANCE
DONALD D. HILL, REGIONAL DIRECTOR, REGION V
LEO C. BADART, CHIEF, BUDGET AND ACCOUNTS DIVISION
GLEN E. POMMERENING, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
EDWARD W. SCOTT, JR., DEPUTY ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
JAMES F. HOODLER, DIRECTOR, MANAGEMENT PROGRAMS AND BUDGET STAFF
ROBERT L. DENNIS, DIRECTOR, OPERATIONS SUPPORT STAFF
PHILIP B. STINESS, JR., CHIEF, MANAGEMENT AND BUDGET SECTION, OPERATIONS SUPPORT STAFF

Mr. SLACK. The next item to which we shall direct our attention is entitled "United States Marshals Service." The justifications are to be found beginning at page 34 of the justifications book, which page we shall insert at this point in the record, together with pages through 53.

[The justification pages follow:]

ROUTING AND TRANSMITTAL SLIP		ACTION	
1 TO (Name, office symbol or location)	INITIALS	CIRCULATE	
	DATE	COORDINATION	
2	INITIALS	FILE	
	DATE	INFORMATION	
3	INITIALS	NOTE AND RETURN	
	DATE	PERSON-VERIFICATION	
4	INITIALS	FILE ME	
	DATE	SIGNATURE	
REMARKS <u>STATUS REPORT</u> GEP's notes on memo indicate preference. Vire met with Komorowski (CWB) and he's trying to get someone interested in option 4 or some variation thereof. He has a copy of the memo for his information and is optimizing for Mullinix and trying to attract his attention.			
Do NOT use this form as a RECORD of approvals, concurrences, disapprovals, clearances, and similar actions.			
FROM (Name, office symbol or location)		DATE	
<i>Fre High</i>		9/27/76	
		PHONE	



EXECUTIVE OFFICE OF THE RESIDENT ATTACHMENT 13
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAR 16 1977

Mr. William B. Gray
Associate Deputy
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Gray:

In February 1975, it was agreed that the Department of Justice would negotiate a contractual agreement with the District of Columbia government that would set the amount to be paid by the District for the prosecution of the D.C. Code performed by the U.S. Attorneys and Marshals. It was intended that this agreement, negotiated under the terms of the District of Columbia Self-Government and Governmental Reorganization Act (P.L. 93-198), replace appropriations language for this purpose carried prior to that time in Departmental and District Appropriations Acts. No agreement has been concluded on this matter to date.

We believe this matter deserves more attention and that it should be resolved before the Federal and local government budgets for FY 1979 are prepared. Therefore, we ask that you prepare a study of the following alternatives for the future provision of the prosecution function in the District of Columbia for violations of the D.C. Code: (1) maintenance of the status quo; (2) reinstitution of a reimbursement system, and perhaps having the District reimburse the Justice Department directly; and, (3) transfer of complete responsibility for prosecution to the D.C. government. The study should be completed by September 1, 1977. For each alternative, it should, at a minimum, discuss the pros and cons, describe the relationship between the Federal and District governments, and detail the methods for implementation. You should

involve the District government as necessary and keep appropriate District officials informed of your work so that they can take account of it in developing the city budget for FY 1979. This study will serve as the basis for determining how this issue should be treated in FY 1979, and as a working document for future discussion on the subject with the District of Columbia government and the Congress.

Sincerely,

W. Bowman Cutter

W. Bowman Cutter
Executive Associate
Director for Budget



United States Department of Justice

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530EXECUTIVE OFFICE FOR
UNITED STATES ATTORNEYS

9/23/77

Mr. W. Bowman Cutter
Executive Associate
Director for Budget
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Cutter:

We regret the delay in providing a study of prosecution functions in the District of Columbia as requested in your letter to Mr. Gray of March 16, 1977. In the attached study we have addressed four alternatives for performing prosecution functions in the District of Columbia: 1) creation of a local prosecutor's office; 2) reimbursement by the District of Columbia for costs incurred by the U.S. Attorney; 3) negotiation of a contractual agreement between the D.C. Government and the Department of Justice; and 4) retention of full Federal Government responsibility. We have concluded that the last alternative offers the most benefit for both the District of Columbia and the Federal Government.

Three appendices are also provided with the study for your further consideration. The appendices include a lengthy memorandum from the U.S. Attorney to the Attorney General on the federal role in the District of Columbia criminal justice process, a memorandum commenting on a report concerning the U.S. Marshal's Office and an article written for the ABA Journal by U.S. Attorney Silbert on the role of the prosecutor.

I hope that these materials will aid in your consideration of the issues to which your March 16 letter refers.

Sincerely,

WPT

William P. Tyson
Acting Director

enclosures

A STUDY OF PROSECUTIONS

FUNCTIONS

Submitted by:

The Executive Office
for U.S. Attorneys

INTRODUCTION

Article One of the Constitution provides that Congress shall have the power "to exercise exclusive Legislation in all Cases whatsoever, over such District, (not exceeding ten miles square) as may, by Cession of particular States, and Acceptance of Congress, become the Seat of the Government of the United States" (Art. 1, Sec. 8 Cl.17). In recent years there has been debate over the degree of self-government which should be allowed to the District. The trend has been toward expanding the delegation of political authority to the District Government as in the most recent home rule act, the 1973 District of Columbia Self-Government and Governmental Reorganization Act, P.L.93-198.

The District Government presently controls many of those functions traditionally considered to be "local" in nature--education, welfare, health housing, and fire and police protection. Congress did not delegate any power over the prosecution of criminal violations to the District of Columbia Government. Responsibility for such prosecution remains vested in the United States Attorney's Office for the District of Columbia, part of the Department of Justice. Thus, all felony offenses and serious misdemeanor offenses in the District are prosecuted by the Federal Government.

The purpose of this study is to examine various options for the provision of the prosecution function in the District

of Columbia for violations of the District of Columbia Code.

The study will consider the following options:

- (1) the transfer of complete responsibility for conducting criminal prosecutions to the District of Columbia.
- (2) the reinstitution of a reimbursement arrangement wherein the District of Columbia Government would pay the United States Treasury for costs incurred in prosecuting D.C. Code offenses.
- (3) the establishment of a contractual relationship in which the Department of Justice would negotiate with the District of Columbia for funds to finance the United States Attorney's Office.
- (4) the retention by the Federal Government of full responsibility for providing resources and for managing cases brought under the District of Columbia Code.

Under current law the responsibility for prosecuting District of Columbia Code offenses is assigned to the U.S. Attorney for the District of Columbia. As long as the Federal Government remains accountable for the performance of the U.S. Attorney, it would seem inconsistent to place any burden on the District Government for financing U.S. Attorney operations. Left with a choice between a District Government prosecutor or a Federal prosecutor, the well established record of the U.S. Attorney's office for legal competency, for intergovernmental cooperation and for community

responsiveness suggests that there would be no substantive benefit transferring prosecutorial responsibility to the District of Columbia Government.